

# **CITY OF COVINGTON**

## **REQUEST FOR PROPOSALS**

**Golf Course Management**

**for**

**Devou Park Golf Course**

**Proposals to be received by March 2, 2009  
10:00 a.m. (Eastern Time)**



Submit Proposals to:

City of Covington  
Office of the City Manager  
638 Madison Avenue  
Covington, KY 41011

Prepared by the  
City of Covington Legal Department  
638 Madison Avenue  
Covington, KY 41011  
(859) 292-2311

[fwarnock@covingtonky.gov](mailto:fwarnock@covingtonky.gov)

**City of Covington**  
**Request for Proposals**  
**Golf Course Management for Devou Park Golf Course**

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**City of Covington  
Request for Proposals  
Golf Course Management for Devou Park Golf Course**

**I. Statement of Intent.** The City of Covington is requesting proposals from responsible Bidders to manage and operate the Devou Park Golf Course (hereafter “Golf Course”) beginning April 1, 2009. The Agreement period shall be for three years and nine months (until December 31, 2012) with an option to extend the Agreement on a month-to-month basis.

**II. Time Line.**

<u>EVENT</u>	<u>TIME</u>	<u>PLACE</u>	<u>DATE</u>
Advertising Request for Proposals			January 30, 2009
Initial pre-proposal meeting	10 a.m	City Hall	February 13, 2009
Deadline to request additional Information from City	10 a.m.	City Hall	February 20, 2009
Final pre-proposal meeting	10 a.m.	City Hall	February 27, 2009
Due date for proposals	10 a.m.	City Hall	March 2, 2009
City Commission final approval by order/resolution			March 24, 2009

**In no event shall the deadline for submission of the proposals be changed except by written modification from the City of Covington, Office of the City Manager.**

**NOTE: ALL PROPOSALS DELIVERED PAST THE DEADLINE WILL BE REJECTED.**

**III. Background.** The City of Covington, Kentucky (hereafter “City”) is the owner of the Devou Park Golf Course, an 18-hole golf course located in Devou Park in Covington, Kentucky.

The Devou Park Golf Course is a well-established par-70 golf course. Its address and phone number are:

Devou Park Golf Course  
1344 Audubon Road  
Covington, Kentucky 41011  
(859) 431-8030

The Golf Course is presently managed by Billy Casper Golf, LLC.

The City is requesting bids from professional and experienced third party management companies to manage and operate the Golf Course.

**IV. General Conditions.** The following information is intended to form the basis for submission of proposals. This material contains general conditions for the procurement process, instructions for submissions of bids, and submission forms that must be included in the proposal. This Request for Proposals (hereafter “RFP”) should be read in its entirety before preparing the proposal.

**4.1** All materials submitted pursuant to this RFP shall become the property of the City of Covington. To the extent permitted by law, all documents pertaining to this RFP shall be kept confidential until the proposal evaluation is complete, and the Agreement is awarded. No information about any submission of proposals shall be released to anyone until the process is complete, except to the appropriate City staff. All information provided shall be considered by the City in making a recommendation to enter into the Agreement with the selected Bidder.

**4.2** Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made in writing and be in the hands of the Office of the City Manager by 10 a.m. Eastern Standard Time on February 20, 2009. Questions can be submitted by letter or email to [jfossett@covingtonky.gov](mailto:jfossett@covingtonky.gov). The City of Covington shall not be responsible for oral interpretations given by any City of Covington employee, representative or others. The issuance of written addenda is the only official method whereby interpretation, clarification or additional information can be given. If any addenda are issued to this Request for Proposals, the City Solicitor for the City of Covington will attempt to notify all prospective submitting entities and the addenda shall become a permanent part of the RFP; **however, it shall be the responsibility of each submitting entity, prior to submitting a proposal to contact the City Manager for the City of Covington at 859-292-2133 to determine if addenda were issued and to make such addenda a part of the submission of its proposal.**

**4.3** The City of Covington reserves the right to: (a) accept or reject any and/or all submissions of a proposal; (b) waive irregularities and technicalities; (c) accept any alternative submission of proposal presented that in its sole opinion, would best serve the interests of the City of Covington; and (d) give full and proper evaluation of the firm or team presenting the proposal. The City shall be the sole judge of the proposal and the resulting negotiated Agreement that is in its best interest, and its decision shall be final. Also, the City reserves the right to make such investigation as it deems necessary to determine the ability of any entity submitting a bid to manage and operate the Golf Course to comply with all terms and conditions of this RFP and the Agreement. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but shall not be limited to: current financial statements by an independent CPA; verification that adequate financing is in place; verification of availability of equipment and personnel; and past performance records. Bidder shall not communicate with City staff or members of the Board of Commissioners regarding their proposal during the proposal review process unless responding to a question or request for information from City staff or at the pre-proposal meetings or to request the Request for Proposal.

**4.4** The approval by the Board of Commissioners of the City of Covington is required before the Agreement may be executed.

**4.5** All expenses for making submission of qualifications shall be borne by the submitting entity.

**4.6** Any submission of proposals may be withdrawn up until the date and time for opening of the submissions. Any submission not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of sixty (60) days to the City of Covington for the Bidder's proposal set forth in the RFP until one or more of the submissions are accepted by the City of Covington.

**4.7** There is a \$25 non-refundable fee to make a bid and to receive the RFP package and other materials from the City of Covington.

**V. Minimum Qualifications.** To be deemed qualified for consideration, a Bidder must:

**5.1** Possess the necessary financial resources to fulfill the obligations of the Agreement.

**5.2** Possess a competent record of employment or history of contract service in the maintenance of golf courses as verified and supported by references, letters, and other evidence from employer and/or public agencies.

**5.3** Have a minimum of five years management experience operating golf courses, and golf food and beverage operations, and/or other golf-related facilities.

**5.4.** Have the experience and capability to submit a marketing plan to promote the use and growth of the Golf Course.

**5.6** Evidence of a good credit rating, and a history of sound financial practices.

**5.7** Have the ability and demonstrated experience to provide golf course maintenance.

**VI. Agreement Requirements.** Submitting entities, if selected, must be willing to sign a Devou Park Management Agreement (the "Agreement") outlining the terms and conditions for the management of the Golf Course. The Agreement will include the following provisions:

**6.1** The Agreement shall consist of (1) the RFP, (2) the proposal submitted by the Bidder to this RFP, and (3) the Agreement. In the event of a discrepancy between the Agreement, the RFP, and the submitted proposal, the Agreement will prevail.

**6.2** The Bidder shall not assign or transfer any interest in the Request for Proposal or the Agreement without prior written consent of the City of Covington.

**6.3 Terms and Conditions in Agreement.** The successful Bidder must be willing to sign an Agreement with the City of Covington containing terms and conditions consistent with the following:

**6.3.1 Indemnity.** Bidder, its agents and employees shall defend, indemnify and hold harmless the City of Covington, its officers, commissioners, agents, employees, staff and their agents (collectively "Indemnitees") from any and all liability to Bidder, and its agents and employees or any third parties for claims, relating directly or indirectly arising out of the Request for Proposal (hereafter "RFP") and the Agreement, including claims for breach thereof made by any third party or arising out of personal injuries, property damage, or loss of life or property resulting from, or in any way connected with, or alleged to have arisen from, the performance of this RFP or the Agreement.

6.3.2 **Waiver of Protest.** By submitting an RFP, Bidder expressly waives any and all rights that it may have to object, protest, or seek legal remedies regarding any aspect of this request, the City's selection of the top proposal, the City's rejection of any or all responses, and any subsequent agreement that might be entered into as a result of this RFP, unless otherwise allowed by law, such as an event of fraud or collusion. By submitting an RFP, Bidder acknowledges that it is aware of and is voluntarily relinquishing its right to object, protest or judicially challenge the solicitation, evaluation and award process as described in this RFP as indicated herein.

6.3.3 **Hold Harmless.** Bidder, its agents and employees shall defend, indemnify and hold the City of Covington and the Indemnitees harmless for the cost of the defense of any claim, demand, suit or cause of action made or brought against the City of Covington or the Indemnitees alleging liability referenced in Paragraph 6.3.1 above, including, but not limited to, cost fees, attorneys' fees, and other expenses of any kind whatsoever arising in connection with the defense of the City of Covington or the Indemnitees; and to assume and take over the defense of the City of Covington and the Indemnitees in any such claim, demand, suit or cause of action upon timely notice and demand for same by the City of Covington.

6.3.4 **Payment of Judgment.** Bidder, its agents and employees shall defend, indemnify and hold the City of Covington and the Indemnitees harmless and pay all judgments that shall be rendered in any such actions, suits, claims or demands against the City of Covington or the Indemnitees alleging liability referenced in Paragraphs 6.3.1 and 6.3.3 above.

6.3.5 **Golf Course Maintenance.** The Bidder shall be responsible for maintenance of the Golf Course and its facilities and shall agree to indemnify and hold the City of Covington harmless on account of any maintenance, whether that maintenance is now or in the future required to be performed.

6.3.6 **Term of Agreement.** The term of this Agreement shall commence upon April 1, 2009, and unless otherwise terminated as provided for herein, shall terminate December 31, 2012, and thereafter may be renewed on a monthly basis upon mutual agreement of the parties thirty days prior to such renewal. The beginning date may be modified by mutual agreement of the City and the entity awarded the bid.

6.3.7 **Representations of Bidder.** Bidder represents it is an experienced manager and operator of high quality golf facilities and understands that City is relying on Bidder's expertise in managing golf facilities in entering into this Agreement. From and after the Effective Date of an Agreement, City will grant to Bidder the right, subject to City's input, to supervise and direct the management and operation of the Golf Course for and on the account of City, and it is understood that Bidder will hereby accept that responsibility, and that it shall supervise and direct the management and operation of Devou Golf Course, pursuant to the terms of the Agreement. City will reasonably cooperate to permit Bidder to carry out its duties pursuant to the operation and management of the Golf Course.

6.3.8 **Responsibilities of Bidder.** Bidder shall render the following services in accordance with the terms of the Agreement:

A. Bidder will be an independent contractor. It shall have the sole and exclusive right to operate and manage the Golf Course.

- B Bidder shall cooperate in a reasonable manner with City.
- C. Bidder shall, without limitation, provide the following:

1. **Employees.** All personnel employed at the Golf Course shall at all times be employees of Bidder. They will not be the employees of City. Bidder shall: be responsible to hire, promote, supervise, direct and train all employees at the Golf Course; fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. All costs of every kind and nature pertaining to all employees at the Golf course arising out of the employer-employee relationship, including, without limitation, salaries, fringe benefits, bonuses, relocation costs, employment-related legal costs, and costs incurred in connection with governmental laws and regulations and insurance rules, shall be an operating expense paid from a Working Capital Account.

2. **Inventory – Merchandise and Items for Re-sale.** Bidder shall obtain merchandise for the pro shop at the Golf Course and food and beverage items, all in accordance with an Annual Budget and Program to be submitted by Bidder and approved by the City.

3. **Supervision.** Bidder shall supervise and operate the golf operations; police the golf course during standard business hours; maintain the golf course, greens, fairways grounds and equipment; manage the golf pro shop and provide quality and modern golf equipment for sale; provide quality mechanically powered golf carts for rental; oversee membership sales; coordinate services for leagues and outings; enforce golf course rules; provide golfer registration and starter services, including an internet-based reservation system; collect green fees, dues, season ticket fees, cart rental and other related fees; manage practice facilities, if any; manage and operate quality restaurant, food and beverage services; coordinate activities at the tennis facilities; manage and schedule receptions and parties; and provide other ancillary services at the Golf Course.

4. **Quality of Course.** Bidder shall maintain the Golf Course in an equal or better condition than when received it began operation of the facilities.

5. **Equipment.** Bidder shall, pursuant to its preparation of Annual Budget and Program as required herein and approved by the City, develop a list of required equipment and a purchase/lease schedules and maintain in good working condition and order the physical plant and equipment at the Golf Course, including the golf course and all physical structures that are part of the Golf Course, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Golf Course in the normal course of business.

6.. **Purchasing and Procurement.** Bidder shall arrange for the procurement of all operating supplies, operating equipment, inventories and services as are deemed necessary for the normal and ordinary course of operation of the Golf Course and to operate the Golf Course in accordance with the Annual Budget and Program submitted by Bidder and approved by the City. Bidder may propose alternative purchasing and procurement practices; however, in doing so, Bidder shall act in good faith and shall not self-deal at the expense of the Golf Course and City. In the event Bidder utilizes its own purchasing procurement services operations, Bidder may receive and retain reasonable and customary minor fees or other compensation from vendors and service providers in exchange for Bidder's services in making the benefit of volume purchases available to the Golf Course or negotiating and implementing the arrangements with such vendors or providers, provided that the cost shall be competitive. Bidder shall disclose to City its reasonable and customary minor fees earned in such transactions. City shall have the right to demand that Bidder purchase from suppliers approved by City.

7. **Consultation.** Bidder shall, as part of its services provided and without additional compensation, make its staff available to City upon request for consultation regarding the Golf Course, including, but not limited to, operating procedures, agronomy, pro shop, food and beverage service, management and operation, capital improvements, Golf Course house space utilization and operations, tennis court maintenance and management, golf cart maintenance and management, and prices and rate structure. Bidder agrees it shall keep City informed of ongoing decisions related to the management of the Golf Course. City shall have the right to enter and inspect the Golf Course premises at any time.

8. **Marketing Plan.** Bidder shall create, direct, and implement a marketing plan for the Golf Course. The marketing plan for the Golf Course shall include market analyses (competitive, customer), Golf Course analyses (programs, utilization, sales), and strategies for achieving the budgeted financial goals and other marketing-related goals for the Golf Course. Further, Bidder shall, as an operating expense of the Golf Course, obtain and manage: 1) marketing systems, including internet-based systems (web site, e-mail, e-commerce); 2) electronic tee sheet program (reservation system, customer database, POS); and branding materials (graphic design, collateral, photography); 3) customer acquisition programs, including advertising (print, electronic, display); 4) direct marketing (direct mail, broadcast e-mail); 5) promotional offers; 6) community and vendor partnerships and sponsorships; 7) customer retention programs, including special events and programs, and promotional offers; 7) membership events and programs; 8) sales programs, including outing, membership, and event sales management; 9) quality assurance programs, including customer surveying; 'secret shopper' on-site visits and telephone sales calls. Bidder shall coordinate and oversee all third party contractors' work in connection with the production and implementation of these programs. Bidder shall also include, as appropriate, the Golf Course as a participant in any Bidder-shared marketing programs, if available and appropriate, including regional and national advertising and promotions, round sharing and referrals through a reservation system. All advertising fees and promotional fees paid by third parties to the Golf Course shall belong to and constitute Gross Revenues of the Golf Course.



9. **Accounting.** Bidder shall provide separate budgeting, bookkeeping and reporting services to City for the Golf Course (it being understood that copies of all books and records shall be kept at the Golf Course and that all books, records, software, data, programs, manuals and the like shall remain the property of City). Bidder shall deliver to the City monthly financial reports in electronic form. Bidder shall: (1) prepare and deliver to the City, in accordance with procedures and formats reasonably acceptable to City, on an accrual basis and generally accepted accounting principles, regular monthly and annual operating statements that shall include, without limitation, comments regarding each monthly and annual report and such other items as City may reasonably request; (2) monthly operating statements shall be furnished to City by the 20<sup>th</sup> day following the last day of each month, and annual operating statements shall be furnished by the 45<sup>th</sup> day following the last day of each fiscal year. (3) at City's discretion, the annual operating statement shall be audited and prepared by a certified public accountant chosen by the City, the cost of which shall be an operating expense of the Golf Course, and this audit shall be performed at the Golf Course site, and Bidder shall make every effort to comply with the auditor's requests; (4) shall prepare and deliver to City no later than November 1<sup>st</sup> of each year (except for the first full or partial fiscal year when Bidder shall prepare and deliver to City no later than thirty (30) days after the Effective Date) for the duration of the Agreement for the following fiscal year: (a) an annual operating budget, including a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Golf Course for the following fiscal year, including, without limitation, a reasonable contingency and anticipated working capital requirements over the Golf Course for the year; (b) a capital improvements budget for the next fiscal year, and (c) a general marketing and operational program with respect to the Golf Course, including, without limitation, operating policies, standards for operations and quality of service standards (collectively, the "Annual Budget and Program"). It is understood that Bidder and City shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before fiscal year end. For purposes of the Agreement, the fiscal year shall be from January 1 to December 31 of each year. The Annual Budget and Program shall also include Bidder's proposals with respect to proposed hours of operation of the golf course, Golf Course house, pro shop, menu for the food and beverage service, merchandise for the pro shop, complimentary Golf Course use by City's representatives, employee play and employee discounts, and a capital reserve in an amount not less than three percent (3%) of projected Gross Revenues from the Golf Course. City shall make the final determination and have the final approval and have final decision-making authority of the Annual Budget and Program. In the event Bidder and City cannot agree upon Annual Budget and Program prior to fiscal year end, the Annual Budget will be the prior fiscal year Annual Budget adjusted by 1.0 times the Cincinnati MSA Consumer Price Index ("CPI"), January to December measurement period for the immediately preceding year. Each party may, from time to time, propose to the other party during the course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and Bidder and City shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made. Bidder shall secure the prior approval of City for: (i) Further provided total expenditures cannot exceed the total expenditure amount approved in Annual Budget and Program; however, as necessary, Bidder has the ability to allocate funds from individual expense line item to another expense line item within the Annual Budget and Program, and (ii) expenditures that will exceed any line item in the Annual Budget and Program by Ten Thousand Dollars (\$10,000), except for expenditures necessary in the event of emergencies for which prompt notice will be given to City. Bidder shall establish, administer, and maintain the payroll procedure and systems for the Bidder employees at the Golf Course and shall be responsible for overseeing the benefits to, and handling the

appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as approved by City pursuant to the Annual Budget and Program. All employees of the Golf Course shall be employees of Bidder, and Bidder shall comply with City of Covington ordinances, including but not limited to ordinances relating to occupational license fees and alcohol beverage control, as well as all federal and state employment laws.

10. **Meetings.** Bidder shall, periodically, consult with the City regarding the Golf Course and its operations at a time, date and place designated by City.

11. **Limitations.** Bidder shall obtain City's prior written approval for: (1) contracts in excess of Ten Thousand Dollars (\$10,000), (2) contracts in excess of twelve (12) months in duration unless the same can be terminated upon thirty (30) days written notice without cost or fee to City, and (3) contracts with affiliates of Bidder.

12. **Assignment of Operations.** Bidder shall operate the Golf Course via its single-purpose entity that it has established or will establish, and whose sole member shall be the Bidder. Upon a termination of the Agreement, Bidder shall assign to City's designee all operating accounts, vendor accounts, inventory, accounts receivable, and accounts payable.

13. **Working Capital Account.** Bidder may submit a proposal to establish a business checking account for the Golf Course (commonly referred to a "Working Capital Account") with control of Working Capital Account delegated to Bidder subject to its use being in compliance with the Annual Budget and Program.

14. **Insurance.** Bidder shall secure, and at all times, maintain liability, property damage, and other insurance for the Golf Course in such amounts, with such coverage and through agents and with underwriters reasonably acceptable to City. The City shall be a named insured on these policies. All insurance policies required shall contain a provision requiring the insurer to notify Bidder, City and other named insured at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions. Bidder shall be responsible for securing and maintaining all of the insurance policies required.

15. **Compensation and fees.** For its services hereunder, Bidder shall submit in its proposal the manner in which it will be paid for its services.

a. Bidder's services herein shall include management and oversight of the turn-key accounting function, and upon reasonable notice (which may be verbal) representatives of City shall have the right to any time during normal business hours to review all of Bidder's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Golf Course including, without limitation, Bidder's work papers related to Bidder's preparation of operating statements.

b. Bidder may bid to provide to the Golf Course services that are furnished generally on a central or regional basis to other golf facilities managed by Bidder.

c. City shall have the right to install security cameras or at or on any of the grounds or facilities located at the Golf Course.

16. **Capital Expenditures.** Capital improvements shall be deemed to include any item purchased in connection with the operation of the Golf Course that: a) has an economic useful life in excess of one (1) year; and, has a cost in excess of Five Thousand Dollars (\$5,000). The Bidder shall submit a proposal for the manner in which capital improvements will be made, and how they will be financed. It is understood that all decisions as to whether or not to undertake any capital improvements projects or otherwise in respect of any capital improvements shall be made by City in consultation with Bidder.

17. **Default and Remedies.** The Agreement will contain the following provisions concerning what shall constitute an event of default ("Event of Default") by Bidder under this Agreement:

The following shall constitute an event of default ("Event of Default") by Bidder under this Agreement, provided that City has fulfilled its obligations hereunder. (1) Failure to maintain the amenities of the Golf Course in reasonably good condition, subject to the abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of Bidder; or (2) Breach by Bidder of any material provisions of this Agreement; or (3) Bidder makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization; or (4) Bidder fails to procure insurance coverage as required herein; (5) Bidder misappropriates or fails to account for or converts any Golf Course funds.

If any material dispute arises between the parties, they agree to meet in good faith and with due diligence to make an effort to resolve the dispute. If no resolution is achieved, they agree to proceed to mediation. If mediation fails to resolve the matter, either party may seek legal redress in the courts of Kenton County, Kentucky.

18. **Termination and Cancellation.** The Agreement will contain the following provisions concern termination and cancellation:

Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party after giving notice as provided in the Agreement.

City may terminate the Agreement upon sixty (60) days prior written notice to Bidder.

Sale of Golf Course; Sale Termination Fee. In the event of a sale or transfer of the Golf Course to an unaffiliated third-party, City shall have the unilateral right to terminate this Agreement at any time on ninety (90) days written notice.

Bidder may submit terms of termination and cancellation in its RFP.

19. **Use of Golf Course.** During the term of the Agreement, the Golf Course shall be a daily-fee or semi-private facility, open to the public unless otherwise provided and agreed to in the Annual Budget and Program.

20. **Liquor License.** Subject to any relevant City of Covington and Commonwealth of Kentucky Alcoholic Beverage Control (“ABC”) licensing requirements, Bidder shall maintain at all times (except for the application period) a valid liquor license on the premises, and Bidder shall comply with all relevant ABC laws regarding the use of such license.

21. **Indemnification and Liability, and Jurisdiction.** (1) **Legal Actions.** Legal counsel for Bidder and City shall cooperate in the defense or prosecution of any action affecting the Golf Course. Bidder shall not institute or defend any legal action or retain counsel affecting the Golf Course without City’s consent. Bidder shall forward all legal notices to City or notices of a financial nature which relate to the Golf Course, at the address listed in the Agreement. Bidder shall advise and assist City in instituting or defending, as the case may be, in the name of Golf Course, City, and/or Bidder, but in any event expressly as a Golf Course expense, all actions arising out of the operation of the Golf Course and not attributable to the negligence of Bidder, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for Bidder, City, or the Golf Course, or to lawfully evict or dispossess tenants or other persons in possession thereunder, or to lawfully cancel, modify, or terminate any lease, license, or concession agreement in the event of breach of default thereof, or to defend any action brought against City, unless otherwise directed by the City. Bidder shall assist City to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Golf Course expense, and any violation, order, rule, or regulation affecting the Golf Course. (2) **Choice of Law and Venue.** The parties agree that the Agreement shall be governed by and construed in accordance with the laws of Kentucky, which shall be the exclusive courts of jurisdiction and venue for any litigation, special proceeding or other proceeding between the parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement. (3) **Indemnity.** Bidder will defend, indemnify and hold City harmless from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities that are asserted against, or sustained or incurred by City because of Bidder’s breach of this Agreement, because of activities arising out of the use or operation of the Golf Course, or because of legal actions or regulatory violations arising from Bidder’s negligence, fraud, or willful misconduct. The scope of the foregoing indemnities includes any and all costs and expenses, including reasonable attorney fees and costs, properly incurred in connection with any proceedings to defend, any indemnified claim, or to enforce the indemnity, or both.

22. **Confidentiality.** Work performed by Bidder and its agents or assigns pursuant to this engagement (including, without limitation, any correspondence, analysis, reports and related materials prepared), constitutes confidential and privileged work product, and Bidder’s communications thereon with City or their respective employees or counsel or other professionals retained by City constitute confidential and privileged communications that are intended to have the full protections of the attorney-client privilege and other applicable privileges. Accordingly, Bidder agrees that it will not provide such oral or written reports or other work product or disclose such communications to any person other than City, except as may be otherwise requested by City. Bidder agrees that all information, not publicly available, which is received by it from City in connection with this engagement will be treated confidentially by Bidder, except as required by process of law or as otherwise requested by City. In the event Bidder is required to disclose any of such information pursuant to process of law, Bidder agrees to provide City with prompt notice so that City may seek appropriate remedies, including a protective order. In any event, Bidder and its agents, representatives, and employees

will furnish only that portion of the information that is legally required to be disclosed. City shall retain exclusive rights to the work and work product of Bidder related to the Agreement. Work output includes reports issued pursuant to the Agreement, but excludes, among other things, all working papers of Bidder, any correspondence, memoranda, calculations, processes, notes, etc. that Bidder may have used in the development of the reports above or such working papers or in the performance of any work covered by an authorization under this Agreement.

23. **General Provisions.** The following general provisions shall be included in the Agreement: (1) **Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties. (2) **Written Amendments.** The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties. (3) **Further Amendments.** The parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement. (4) **Compliance with Laws.** Bidder shall, at all times, operate, use, and conduct the business of the Golf Course in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Golf Course, with City's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Golf Course. (5) **Environmental Laws.** Bidder may submit proposed language for City's consideration. (6) **Binding.** All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party. (7) **Assignment.** The Bidder may not assign this Agreement. (8) **Subordination and Estoppel.** This Agreement shall be subject and subordinate at all times to the lien of any mortgage or bond (or any such instrument providing a security interest) which may now exist or may hereafter be executed in any amount for which the Golf Course or any portion thereof is specified as security to the benefit of City. Bidder shall not pledge any interest in the Golf Course's assets or real property as collateral or security for any loan or obligation owed by Bidder. Within 10 days of any such written request that the City may make from time to time, Bidder shall execute and deliver to City a statement in a form reasonably satisfactory to City certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modification), the date to which the Base Fee and Annual Incentive Fee have been paid, the fact that there are no current defaults under this Agreement by City or Bidder, except as specified in Bidder's statement, and such other matters reasonably requested by City. (9) **Right to Pledge.** Any provision herein contained to the contrary notwithstanding, City shall have the right to assign all or any portion of its right, title and interest in, to and under this Agreement and in and to the Golf Course, by way of mortgage or security agreement, in order to secure the repayment of construction and/or permanent loans made for the purpose of financing all or any portion of its costs relating to the construction of the golf course, Golf Course house and improvements thereon, as well as loans for working capital. City shall be allowed to sell or transfer the Golf Course, or otherwise pledge or encumber it, without consent of Bidder, and sell and assign the Golf Course, free and clear of this Agreement. 10. **Notices.** All notices, requests, consents and other communications required or permitted under this

Agreement shall be in writing and shall be deemed to have been given: (i) when delivered, if hand delivered, (ii) two (2) business days after deposit with a reputable overnight courier marked for “next business day” delivery, or (iii) upon receipt, if sent by facsimile, provided that an original thereof is thereafter sent in the manner provided above, and shall be addressed as indicated in the Agreement. (10) Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement. (11) Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible. (12) No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either party in any event shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided. (13) No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of Bidder to City is that of an independent contractor. (14) No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. (15) Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.

**VII. Miscellaneous.** The following miscellaneous guidelines apply to the RFP:

**7.1 Inspection.** City will grant to Bidder a temporary license to enter onto the Devou Park Golf Course to investigate the Golf Course and its facilities. Bidder shall conduct such investigation in such a manner so as to minimize any damage to the Golf Course and Bidder shall promptly restore any damaged areas of the Golf Course to its condition prior to Bidder's entry onto the Golf Course. Bidder agrees to indemnify City from and against any loss or damage incurred or suffered by City relating to any activities of Bidder, its employees or independent contractors, while on or about the Golf Course during its investigation or otherwise.

**7.2** Each submitting entity is responsible for full compliance with all laws, rules and regulations which may be applicable.

**7.3** Before an Agreement will be signed by the City, the submitting entity, if selected, must provide the City with a copy of its valid business license or with an affidavit explaining why it is exempt from the business licensure requirements of the city or county in which it is headquartered. If an Agreement is signed, the Bidder's business license shall be kept current throughout the duration of the Agreement, and the Bidder shall inform the City of changes in its business name or location.

**7.4** The City shall retain the right to enter the Golf Course and use it for City sponsored events. The City shall have the right to use the parking facilities at the Golf Course at all times.

**7.5** The Bidder shall allow The City of Covington reasonable access for public utility maintenance and repair for water, sewage system, gas, electric and other utility systems that may be necessary to maintain and repair existing facilities located on the Golf Course.

**VIII. Instructions to Submitting Entities.** All submissions of proposals shall comply with the following instructions. These instructions are intended to ensure that (1) submissions contain the information and documents required by the City of Covington in this RFP; and (2) the submissions have a degree of uniformity in the presentation of material, which will facilitate evaluation by the City.

**8.1 General.** Submission forms and RFP documentation may be obtained on or after January 30 for a non-refundable \$25 fee:

City of Covington  
Office of the City Manager  
638 Madison Avenue  
Covington, KY 41011

between 8:30 a.m. and 5:00 p.m. (Eastern Time), Monday through Friday or by calling 859-292-2133.

**8.2 Proposal Submissions.** An original and six copies of the proposal shall be submitted. Proposals shall clearly indicate the legal name, address and telephone number of the submitting entity (company, firm, and partnership, individual). Proposals shall bear an original signature, being signed above the typed or printed name and title of the signer. All proposals must be signed by an officer of the company authorized to bind the firm to an Agreement.

Proposals will be received until 10:00 a.m., Eastern Time, on March 2, 2009. Each proposal must be submitted in a sealed envelope addressed to the City of Covington. Each sealed envelope containing a proposal must be plainly marked on the outside "Submission of Proposal to Manage the Devou Park Golf Course to be Opened 10:00 a.m. (Eastern), March 2, 2009."

Any proposal received after the time and date listed on the cover sheet will not be considered. It shall be the sole responsibility of the submitting entity to have the proposals delivered to the City of Covington, Office of the City Manager for receipt on or before that date. If a proposal is sent by U.S. mail, the submitting entity shall be responsible for its timely delivery to the City of Covington. Proposals delayed by mail shall not be considered and arrangements shall be made for return at the submitting entity's request and expense.

**8.3 Format.** Proposals must be typed on 8.5 x 11 inch wide white paper. Pages must be consecutively numbered. A table of contents must be included in the proposal immediately after the title page. Proposals shall be structured as follows:

1. **Transmittal letter.** Letter will express the Bidder's interest in submitting an RFP. The names, addresses, phone numbers, and email addresses of those submitting the RFP shall be included in the letter.

2. **Executive summary.** The RFP shall include an Executive Summary of the RFP. No more than four pages. It may include the submitting entity's vision statement for the Golf Course, history, qualifications and experience, and organizational structure. It should be intended to be a talking points summary of the RFP.

3. **Bidder's description.** The name, address, telephone number, web site, email address of the Bidder.

4. **Bidder's vision.** The City is seeking a vibrant, financially sound and busy Devou Park Golf Course. The Bidder should submit a narrative description of the philosophy, operating principles, and specifically the Bidder's approach to the operation of golf facilities, and the vision for, and approach to, operating the Devou Park Golf Course.

5. **Qualifications and responsibilities of key personnel.** The proposal should include the following:

a) **Firm overview.** A brief overview of the firm, including the names and roles of key officers and managers, and experience and ability to work with public entities.

b) **On-site team.** An overview and organizational structure of the on-site management team, resumes, job descriptions, recruitment plan.

c) **Staffing plan.** A staffing plan for the specific areas of responsibility at the Golf Course including the staffing for maintenance, golf course operations, tournaments, clubhouse and banquet services, facility management. The plan should include specific proposed staffing levels in different seasons of the year, and different days of the week.

d) **Transition plan.** The RFP should include a transition plan for working with the present operator of the Golf Course.

6. **Bidder's qualifications and capabilities.** A descriptions should include:

a) Experience and references of similar work performed in the last five years. The names, addresses, phone numbers and email addresses of references should be provided.



b) A listing of all golf course and/or food and beverage operations managed by the Bidder. The names, addresses, phone numbers and email addresses of these should be provided.

7. **Description of proposed services.** The bid should include a description of the nature, methods and processes that will be used to provide the services necessary to operate and manage the Golf Course. This should include: a) Golf operations. A detailed service plan that describes the nature of all services to be provided by the Bidder related to golf shop, lessons, cart rental, food, banquets, tennis courts and other aspects of the Golf Course. b) Golf course and facility maintenance. A detailed description of the full range of maintenance services and programs including a description of the seasonal activities that will be provided, routine maintenance practices, including mowing, planting, landscaping and so forth. c) Club house and banquet services. A description of the full range of food-related services to be provided at the Golf Course, including the club house facilities, snack bar services, and the manner of managing those facilities.

8. **Complaint management plan.** The Bidder shall submit its plan to manage complaints, questions and concerns about the Golf Course.

9. **Marketing plan.** The Bidder shall submit its plan on how to market the Golf Course.

10. **Corporate structure and organization.** A description of the organization, major divisions, parent holding companies.

11. **Business activity statement.** A list of golf courses, food and beverage operations should be provided by the Bidder.

12. **Financial statements and references.** A balance sheet and income statement of the most recent past fiscal year shall be submitted by the Bidder. Two financial references should be provided including the names, addresses, phone numbers and email addresses of the references.

13. **Business references.** The Bidder should provide up to six references. A brief description of the nature and extent of the business relationship with the references should be provided.

14. **Agreement structure, terms and conditions.** The Bidder should provide its management plan for the golf course including the specific terms and conditions of a proposed Agreement.

15. **Submission Form (S-1) & Non-Collusion Affidavit.** The Bidder should include a signed Form S-1 and the Non-Collusion Affidavit attached to this RFP.

**8.4 Format.** Proposals must be typed on 8.5 x 11 inch wide white paper. Pages must be consecutively numbered. A table of contents must be included in the proposal

**8.5 Evaluation of Proposals.** All qualified submissions received by the deadline will be analyzed by the City in part according to the price and other terms, conditions and contingencies set forth in the proposal. It is expressly understood that the City is under no obligation to accept any offer that is submitted to it.

## **Submission Forms**

**CITY OF COVINGTON  
REQUEST FOR PROPOSALS  
Golf Course Management for Devou Park Golf Course**

**Submission Form (S-1)**

**Proposals to Be Received by 10:00 A.M., Eastern Time, March 2, 2009  
Office of City Manager, City Hall, 638 Madison Ave., Covington, KY 41011**

**IMPORTANT: An Original and six (6) copies are to be submitted.**

**Please complete the following:**

**Legal Name of Bidder:**

**Address:**

**Telephone Number:**

**Fax Number:**

**Email Address:**

**Contact Person:**

**Signature: \_\_\_\_\_**

**Name of Signer:**

**Note: Failure to use these response sheets may disqualify your submission.**

## **Non-Collusion Affidavit**

Commonwealth of Kentucky  
County of Kenton

\_\_\_\_\_ being first duly sworn, deposes and says that:

(1) He/She is the \_\_\_\_\_ of \_\_\_\_\_, the firm that has submitted the attached Proposal to manage and operate the Devou Park Golf Course;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal, including all information and details contained in the RFP;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said firm nor any of its officers, partners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit a collusive or sham proposal in connection with the Agreement or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such Agreement or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Covington or any person interested in the proposed Agreement or agreement; and

(5) The proposal in the Request for Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, the City, its employees, or parties including this affinity.

(Signed): \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of 2009.

\_\_\_\_\_

Notary Public

My Commission expires: \_\_\_\_\_